

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 21, 2000

IN RE:

**ALL TELEPHONE COMPANIES TARIFF
FILINGS REGARDING RECLASSIFICATION
OF PAY TELEPHONE SERVICE AS REQUIRED
BY FEDERAL COMMUNICATIONS COMMISSION
(FCC) DOCKET 96-128**

)
)
)
)
)
)
)

**DOCKET NO.
97-00409**

**ORDER OF PRE-HEARING OFFICER DENYING MOTION FOR INTERIM
RELIEF, REQUESTING COMMENTS FROM PARTIES TO DOCKET
NO. 97-00409 AND SETTING A PROCEDURAL SCHEDULE**

This matter came before the Pre-Hearing Officer at a properly noticed Pre-Hearing Conference on July 11, 2000.

Background

Pursuant to Section 276 of the Telecommunications Act of 1996, the FCC issued orders for the implementation of payphone reclassification and compensation in its Docket No. 96-128. These FCC orders mandated state commissions to enforce new rules, which, among other things, require telephone companies to file tariffs with state commissions that reclassify their payphones and remove the subsidies to payphone operations from other classes of services. The FCC also ordered that the revised rates be implemented effective April 15, 1997. As a result, the following telephone companies filed tariffs with the Tennessee Regulatory Authority ("Authority"): BellSouth Telecommunications, Inc. ("BellSouth"); United Telephone Southeast, Inc. ("UTSE"); Citizens Telecommunications

FAKED
POSTED
7-21-00

Company of Tennessee and Citizens Telecommunications Company of the Volunteer State (collectively "Citizens"); Peoples Telephone Co.; West Tennessee Telephone Co.; Ooltewah/Collegedale Telephone Co.; Ardmore Telephone Co.; Crocket Telephone Co.; Claiborne Telephone Co.; Adamsville Telephone Co.; Millington Telephone Co.; and the Telephone Data System ("TDS") Companies, which include Tennessee Telephone Co., Humphreys County Telephone Co., Concord Telephone Exchange, Inc., and Tellico Telephone Co.

The Consumers Advocate Division of the Office of the Attorney General ("Consumer Advocate"), Tennessee Payphone Owners Association ("TPOA"), AT&T Communications of the South Central States, Inc. ("AT&T"), and MCI WorldCom ("MCI") requested that the Authority convene a contested case proceeding to determine whether the proposed tariffs comply with the FCC orders. Thereafter, the Authority established Docket No. 97-00409 and appointed Director H. Lynn Greer, Jr. as the Pre-Hearing Officer.

At a Pre-Hearing Conference held on May 29, 1997, the Consumer Advocate requested the Authority bifurcate Docket No. 97-00409 to allow the current docket to proceed with BellSouth, UTSE, and Citizens and to open another docket to consider the reclassification of payphones by the remaining, smaller independent local exchange carriers ("independent LECs"). The Pre-Hearing Officer, having examined the record, agreed to the Consumer Advocate's request and ordered the opening of Docket No. 97-01181 to address independent LECs' rates.

On September 3, 1997, the Pre-Hearing Officer held a status conference to determine the outstanding issues in Docket No. 97-00409. The following issues emerged:

1) the calculation of subsidies to or from payphone operations; 2) the appropriate rate changes to remove any determined subsidies; and 3) the appropriate access line rates for payphones. The Pre-Hearing Officer held another status conference on September 23, 1997 to determine whether the parties had settled any issues and to set a procedural schedule for the completion of the docket.

On March 4, 1998, the TPOA filed a motion to continue on behalf of all the parties in the proceeding. The TPOA argued that the Authority should continue this docket until it completes Docket No. 97-01262 ("Permanent Price Docket") and Docket No. 97-00888 ("Universal Service Docket") because both of these dockets involve the determination of the costs of various BellSouth services, including the costs of facilities used to serve pay telephones. The Pre-Hearing Officer agreed that the resolution of these dockets would influence the outcome of the current docket and, therefore, granted the continuance.

Docket No. 97-00409 remained inactive for over two years until March 21, 2000, when the TPOA requested that the Authority reconvene the proceedings and fix a tentative schedule for the final resolution of the outstanding issues. The TPOA gave three reasons to reconvene: 1) Docket 97-01262 appears to be reaching a conclusion; 2) the FCC recently released a decision that clarifies Section 276 guidelines for determining access rates for pay telephone lines; and 3) virtually all TPOA members are small firms who have suffered financial hardship because of the unexpected delay in this proceeding. BellSouth submitted a letter on March 31, 2000 agreeing that the proceeding should be reconvened, but disagreed with the TPOA's characterization of the FCC order.

In a letter dated April 27, 2000, the TPOA requested that the Pre-Hearing Officer ask all local exchange carriers ("LECs") to participate in the proceeding. The TPOA noted

that the Authority previously determined that it would address BellSouth's, Citizen's, and UTSE's payphone rates before setting the independent LECs' rates. The TPOA also suggested that the Authority adopt a procedure to determine cost-based rates for non-BellSouth carriers. TPOA suggested that non-BellSouth LECs should prepare and file cost studies for the determination of payphone rates. Those cost studies should be consistent with the methodology used by BellSouth and the adjustments ordered by the Authority in Docket No. 97-01262. In the alternative, the TPOA suggested that any LEC that elects to not file cost studies should be presumed to have the same costs as BellSouth for the limited purpose of fixing payphone rates. Under this procedure, BellSouth's rates would be proxy rates for the non-BellSouth LEC unless and until those companies filed cost studies.

In a letter dated May 12, 2000, UTSE and Citizens objected to the TPOA's requests and recommended maintaining the continuance in Docket No. 97-00409, because final orders have not issued in Docket Nos. 97-01262 or 97-00888. UTSE and Citizens also stated that because the Authority has accepted jurisdiction in these proceedings and because of the limited scope of the FCC order cited by the TPOA, the TPOA's reliance on the FCC order is misplaced. Additionally, UTSE and Citizens argued that Section 276 does not require the use of unbundled network element ("UNE") costs to establish cost-based pay telephone rates and that the FCC's order is flawed in requiring local exchange companies to set payphone rates at UNE-based rates. Thus, argued UTSE and Citizens, the Authority should not take action to set payphone rates until the FCC responds to petitions to reconsider the order relied upon by the TPOA.

UTSE and Citizens also disagreed with the TPOA's suggestion that they file cost studies in this proceeding. They contended there are other less onerous methods for

determining cost-based rates that still satisfy Section 276. They argued they are different companies with different costs than BellSouth and that they have previously filed and have in effect interim payphone rates. For these reasons, argued UTSE and Citizens, there is no reason to adopt another proxy rate for them, especially proxies that may not be appropriate given their differences from BellSouth.

On June 22, 2000, the TPOA filed a Motion for Interim Relief. In its motion, the TPOA stated that its members who operate payphones in the BellSouth region pay average rates of \$40 per payphone line. This rate includes line and usage charges as well as the end-user line charge (“EULC”) and the preferred inter-exchange carrier charge (“PICC”). TPOA also claimed that based on a recent ruling from the FCC’s Competitive Pricing Division, this figure exceeds the appropriate price. Based on its approximations, the TPOA proffered an average rate of \$18.90 per line as an appropriate interim rate. Attached to the TPOA’s motion were affidavits from several payphone operators claiming to have suffered severe economic harm as a result of the unforeseen three-year delay in fixing pay telephone rates.

The Consumer Advocate, UTSE, and BellSouth filed comments to the Motion for Interim Relief on June 30, 2000. The Consumer Advocate supported a swift resolution to the payphone proceedings. Moreover, the Consumer Advocate supported interim relief for independent payphone providers. The Consumer Advocate claimed that the current delay is “destroying competition by adversely affecting the expenses and revenues of independent payphone providers.”

In its response, UTSE stated that the TPOA’s reasons for relief contain assertions that could impact UTSE if they are accepted as true and applied to UTSE as well as

BellSouth. UTSE noted the dramatic increase in independent payphone providers, despite the purported exorbitant rate. UTSE claimed the payphone providers' revenue decreases and other alleged economic harm stem from increased competition, increases in costs other than those in dispute, and their failure to collect dial around compensation from inter-exchange carriers. Lastly, UTSE opposed the TPOA's motion to the extent that it continues to seek the application of BellSouth UNE rates, costing methodologies, and/or prices derived from a proceeding containing no evidence of UTSE's costs, methodology, or prices. For these reasons, UTSE claimed the TPOA's basis for requesting interim relief is unfounded and asked that the TPOA motion be denied.

BellSouth's comments put forth many of the same arguments as UTSE. BellSouth noted that the FCC specifically rejected the Section 251 and 252 pricing regime for payphones. Instead, BellSouth claimed the FCC found that under Section 276 the Computer III tariff procedures and pricing, including the new services test, are more appropriate for basic payphone services provided by LECs to independent payphone providers. Thus, argued BellSouth, where an LEC has already filed intrastate tariffs for pay telephone access services, states may, after considering the requirements of the FCC orders and Section 276, conclude that the existing tariffed rates are appropriate and that in such case no further filings are required. Nonetheless, BellSouth stated that it does not oppose setting a procedural schedule in this matter.

The TPOA filed its reply on July 7, 2000. The TPOA reiterated its position that BellSouth's payphone rates are excessive. Further, argued the TPOA, a small reduction in the monthly charge will keep more payphones in operation. The TPOA stated that "[a]s a result of the unanticipated three-year delay in resolving this matter, many Tennessee

payphones have been taken from service.” The TPOA also argued that BellSouth failed to provide a legal justification for its argument that an evidentiary hearing is necessary. If there were such a legal reason, claimed the TPOA, BellSouth’s current rates, which have been accepted as “interim” rates by the parties and the TRA, would be illegal. If the TRA had the power to approve the current rates as interim rates, then it can approve modified interim rates whether or not the parties are in agreement.

July 11, 2000, Pre-Hearing Conference

The Pre-Hearing Officer held a Pre-Hearing Conference on July 11, 2000. The purpose of the conference was to address the Motion for Interim Relief and set a procedural schedule. The parties in attendance were:

BellSouth Telecommunications, Inc. – **Guy M. Hicks**, 333 Commerce Street, 22nd Floor, Nashville, TN 37201-3300 and **Langley Kitchings**, Esquire, 675 W. Peachtree Street, Suite 4300, Atlanta, GA 30375, who participated telephonically;

Citizens Telecommunications Company of Tennessee and Citizens Telecommunications Company of the Volunteer State – **John B. Adams**, Esquire, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900;

Consumer Advocate Division, Office of the Attorney General – **Vincent Williams**, Esquire and **Vance Broemel**, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243;

Tennessee Payphone Operators Association – **Henry Walker**, Esquire, Boulton, Cummings, Connors & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

Telephone Data System Companies – **Dale Grimes**, Esquire, Bass, Berry & Sims PLC, 2700 First American Center, Nashville, TN 37238; and

United Telephone Southeast, Inc. – **James B. Wright**, Esquire, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900.

During the conference, the Pre-Hearing Officer heard the parties’ oral arguments on the Motion for Interim Relief and comments on the request to reconvene the docket. In

addition, the Pre-Hearing Officer raised the issue of whether the parties to Docket No. 97-01181 should participate in this docket despite the previous order bifurcating Docket No. 97-00409. The Pre-Hearing Officer then asked the parties whether they could agree on a revised interim rate and heard comments on the issue. Thereafter, the Pre-Hearing Officer made the following findings:

1. The TPOA's proposed rate is not based on findings gathered during an evidentiary hearing and the issues involved with setting an interim rate are controversial.
2. The parties do not agree to the revised interim rate proposed by TPOA or any other revised interim rate.
3. There are no objections to reconvening Docket No. 97-00409.
4. The extended delay in concluding this proceeding was not expected at the time the docket was continued.
5. Further delay in setting cost-based pay telephone rates potentially harms competition in the pay telephone market.
6. The principal issue in this proceeding is determining the appropriate rate for pay telephone access lines.
7. The parties agreed to the following schedule for the resolution of this docket:
 - Discovery requests must be filed with the Authority and served on all parties by **2:00 p.m., Tuesday, July 25, 2000.**
 - Responses to Discovery must be filed with the Authority and served on all parties by **2:00 p.m., Tuesday, August 15, 2000.**
 - Proposed payphone access line rates with detailed cost support shall be filed with the Authority and served on all parties no later than **2:00 p.m., Friday, September 15, 2000.**
 - Pre-filed Direct Testimony shall be filed with the Authority and served on all parties no later than **2:00 p.m., Friday, September 15, 2000.**

- Discovery requests must be filed with the Authority and served on all parties by **2:00 p.m., Friday, September 22, 2000**. Such requests shall be limited to the information contained in the September 15, 2000 filings.
 - Responses to Discovery must be filed with the Authority and served on all parties by **2:00 p.m., Friday, September 29, 2000**.
 - Rebuttal to Pre-filed Direct Testimony shall be filed with the Authority and served on all parties no later than **2:00 p.m., Friday, October 6, 2000**.
 - Pre-Hearing Conference shall be held on **Tuesday, October 10, 2000**, immediately following the Authority's regularly scheduled Conference.
8. The Pre-Hearing Officer entered a Protective Order on June 6, 1997.

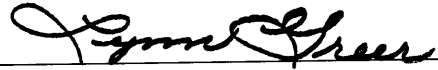
IT IS THEREFORE ORDERED THAT:

1. Docket No. 97-00409 is hereby reconvened.
2. The Motion for Interim Relief filed by the Tennessee Payphone Owners Association on June 22, 2000 is hereby denied.
3. The procedural schedule as agreed to by the parties and set out above is hereby adopted. The cost studies due on Friday, September 15, 2000 at 2:00 p.m. shall clearly describe and identify the cost methodology, cost model inputs, and all other supporting information necessary to develop a clear understanding of how the proposed rates are calculated. All Pre-filed testimony shall clearly reference the cost studies and supporting material where appropriate.
4. All parties in Docket No. 97-01181 are hereby requested to file comments on the options listed below for how to proceed with Docket No. 97-01181 by July 21, 2000 at 2:00 p.m.
 - A. Combine the proceedings and permit local exchange companies not under price regulation to file proposed rates in Docket No. 97-00409 pursuant to the above procedural schedule;

B. Maintain separate proceedings and permit the local exchange companies not under price regulation to file proposed rates in Docket No. 97-01181; or

C. Maintain separate proceedings and allow local exchange companies not under price regulation to intervene in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates filed by the current parties to Docket No. 97-00409.

5. Pursuant to Tenn. Code Ann. § 4-5-317, any party may file a petition for reconsideration within fifteen (15) days of the entry of this order.



Director Lynn Greer
Pre-Hearing Officer

ATTEST:



K. David Waddell, Executive Secretary